

<sup>3</sup> The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish diagnosed lumbar conditions causally related to the accepted July 27, 2017 employment incident.

## **FACTUAL HISTORY**

On July 27, 2017 appellant, then a 50-year-old certified nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained back and right leg injuries when she was turning a 220-pound patient to place the patient in the overhead lift while in the performance of duty. She stopped work on the date of injury. On the reverse side of the form, appellant's supervisor controverted the claim.

A July 27, 2017 OWCP authorization for examination and/or treatment (Form CA-16) was completed by the employing establishment noting that there was doubt as to whether appellant's condition was caused by an injury in the performance of duty.

In a development letter dated August 1, 2017, OWCP informed appellant that she had not submitted sufficient factual or medical evidence to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In an August 15, 2017 narrative statement, appellant responded to OWCP's questionnaire and described the circumstances surrounding her injury. She reported that on July 27, 2017 she was assisting a patient with showering and dressing activities which involved a lot of lifting, turning, and rotating of the patient. Appellant noted that the patient was dead weight and had not used his lower body from the neck down, weighing approximately 200 pounds, to assist with the process. She reported experiencing pain and discomfort in her mid to lower back area, as well as a surge down her left leg and pulsation down her right leg. Appellant informed her supervisor on the date of the incident and sought treatment with her treating physician. She noted a prior, similar injury in March 2017 when she hurt her back while working for the employing establishment and was diagnosed with a lumbar injury.

In support of her claim, appellant submitted August 2 and 16, 2017 x-rays of the lumbar spine which revealed no acute bone abnormality and mild multilevel degenerative changes.

An August 4, 2017 report was also submitted from Dr. Charles W. Rice, a treating chiropractor. He diagnosed spinal subluxations at C5, C6, T2, T3, T6, T7, L4, and L5 based upon decreased segmental motion and pain.

In an August 16, 2017 report, Dr. Claire Cascio, an osteopath Board-certified in family medicine, reported that appellant complained of sudden onset, acute back pain which began on July 27, 2017. She diagnosed muscle spasm and low back pain and recommended physical therapy. In an August 16, 2017 state workers' compensation form report, Dr. Cascio diagnosed low back pain and lumbar muscle spasm, and checked a box marked "work related."

By decision dated September 6, 2017, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted July 27, 2017 employment incident.

On September 26, 2017 appellant requested review of the written record before a representative of OWCP's Branch of Hearings and Review. Medical forms, prescription notes, and work restrictions dated August 11 through September 26, 2017 were submitted in support of her claim.

In an August 11, 2017 patient visit note, Dr. Michael Wasylik, a Board-certified orthopedic surgeon, reported that appellant complained of low back pain from trauma to the back.

In a September 18, 2017 report, Dr. Cascio diagnosed muscle spasm and low back pain.

A nurse practitioner completed an attending physician's report (Form CA-16) on September 26, 2017, noting findings of mild multiple level degenerative changes and a diagnosis of low back pain.

A magnetic resonance imaging (MRI) scan of the lumbar spine dated October 9, 2017, was interpreted as revealing thoracolumbar dextro scoliosis with lower lumbar levoscoliosis, and L3-S1 disc bulge with facet arthropathy.

In an October 16, 2017 prescription note, Dr. Cascio referred appellant for an orthopedic evaluation due to a diagnosis of posterior listhesis at L5-S1 and bulging discs at L3-4 and L4-5.

In reports dated October 27 and November 27, 2017, Dr. Kwang Tseng, an osteopathic physician Board-certified in family medicine, diagnosed intervertebral disc disorder with myelopathy of the lumbar region. He noted that appellant's back pain and symptoms began on July 27, 2017.

By decision dated January 4, 2018, OWCP's hearing representative affirmed the September 6, 2017 decision, as modified, finding that the medical evidence established a firm medical diagnosis. However, she denied the claim because the medical evidence of record failed to establish that the diagnosed medical conditions were causally related to the accepted July 27, 2017 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related

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<sup>4</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>7</sup> The second component is whether the employment incident caused a personal injury.<sup>8</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>9</sup> The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish diagnosed lumbar conditions causally related to the accepted July 27, 2017 employment incident.<sup>11</sup>

In support of her claim, appellant submitted multiple medical reports dated August 16 through November 27, 2017 from Drs. Cascio and Tseng. The Board finds that these reports are not well rationalized.<sup>12</sup> Initially, Dr. Cascio only noted diagnoses of muscle spasm and pain. The Board has long held that pain and spasm are symptoms of conditions, not medical diagnoses.<sup>13</sup> While in subsequent reports Dr. Cascio provided medical diagnoses of posterior listhesis at L5-S1, bulging discs at L3-4 and L4-5, and Dr. Tseng diagnosed intervertebral disc disorder with myelopathy of the lumbar region, neither physician provided an opinion regarding the cause of appellant's diagnosed conditions. The Board has held that medical evidence that does not offer an

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<sup>5</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *M.K.*, Docket No. 19-0428 (issued July 15, 2019).

<sup>10</sup> *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

<sup>11</sup> *R.V.*, Docket No. 18-1037 (issued March 26, 2019).

<sup>12</sup> *R.C.*, Docket No. 19-0376 (issued July 15, 2019).

<sup>13</sup> *T.D.*, Docket No. 18-1190 (issued March 11, 2019).

opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>14</sup> These reports, therefore, are insufficient to establish appellant's claim.

The remaining medical evidence of record is also insufficient to establish causal relationship between appellant's lumbar injury and the accepted July 27, 2017 employment incident. Dr. Wasylik's August 11, 2017 report is of no probative value as he only noted low back pain, but failed to provide a firm medical diagnosis or offer an opinion on the cause of her condition.<sup>15</sup>

OWCP received diagnostic studies. The Board has held that diagnostic studies are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.<sup>16</sup>

The record also contains an August 4, 2017 report from Dr. Rice, a chiropractor, who treated appellant for lumbar subluxations. Under FECA the term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. If the diagnosis of a subluxation as demonstrated by x-ray is not established, the chiropractor is not a physician as defined under FECA and his or her report is of no probative value to the medical issue presented.<sup>17</sup> As Dr. Rice diagnosed spinal subluxations based upon decreased segmental motion and pain, rather than x-ray evidence, he is not considered a physician under FECA and his opinion is of no probative medical value.<sup>18</sup>

The nursing notes of record are also of no probative value. Nurse practitioners are not considered "physician[s]" as defined under FECA.<sup>19</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>20</sup>

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<sup>14</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>15</sup> *A.B.*, Docket No. 18-0577 (issued October 10, 2018).

<sup>16</sup> *E.R.*, Docket No. 18-0391 (issued August 24, 2018). See also *C.P.*, Docket No. 15-0600 (issued June 2, 2015); *D.H.*, Docket No. 11-1739 (issued April 18, 2012).

<sup>17</sup> *R.P.*, Docket No. 19-0271 (issued July 24, 2019).

<sup>18</sup> *Supra* note 19. Section 8101(3) of FECA, which defines services and supplies, limits reimbursable chiropractic services to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary. 5 U.S.C. § 8101(3). See *K.J.*, Docket No. 18-1520 (issued June 13, 2019).

<sup>19</sup> 5 U.S.C. § 8102(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.

<sup>20</sup> *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

The work restriction and appointment notes, as well as progress reports documenting treatment are of no probative value as they do not provide evidence that appellant's current conditions were causally related to the July 27, 2017 employment incident.<sup>21</sup>

On appeal appellant argues that she had sustained a prior work injury relating to her back under OWCP File No. xxxxxx822 which should have been combined with her current claim. The Board notes, however, that the issue of whether OWCP should administratively combine appellant's claims is not properly before the Board.<sup>22</sup>

The Board finds that the record lacks rationalized medical evidence establishing causal relationship between the July 27, 2017 employment incident and appellant's diagnosed lumbar conditions.<sup>23</sup> Thus, appellant has not met her burden of proof.<sup>24</sup>

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that her diagnosed lumbar conditions were causally related to the accepted July 27, 2017 employment incident.

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<sup>21</sup> *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

<sup>22</sup> 20 C.F.R. § 501.2(c)(1).

<sup>23</sup> *K.L.*, Docket No. 18-1029 (issued January 9, 2019).

<sup>24</sup> The Board notes that the employing establishment issued an authorization for examination and/or treatment (Form CA-16). A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 4, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 19, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board